IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4474 of 2006
Date of Decision: 14.09.2006

Prem Kumar and another

Petitioners

versus

State of Haryana and others

Respondents

CORAM:- **HON'BLE MR. JUSTICE JASBIR SINGH**

HON'BLE MR. JUSTICE PRITAM PAL

Present: Shri J.P.Sharma, Advocate for the petitioners
Shri S.S.Patter, Sr.DAG Haryana for respondent No.1
Shri V.P.Malik, Advocate for respondent Nos.2 and 3

Jasbir Singh, J. (Oral)

Petitioners have filed this writ petition with a prayer to quash orders Annexures P/1 to P/4 and also letter Annexure P/5.

It is case of the petitioners that they being house-less persons, raised loan to the extent of Rs.80,000/- each from respondent No.2, in the years 1994 and 1995 respectively. As per the terms and conditions of the loan agreement, interest was to be charged @ 15.7% per annum. It has further been stated that the amount of loan, alongwith interest, was to be repaid within 20 years, in 80 equated quarterly installments. Amount of each installment was fixed at Rs.3291.20 and Rs.3344.80 respectively. It has further been stated that up to 31.3.2002, against loan of Rs.80,000/-, during last nine years, the petitioners have deposited Rs.1,69,696/- with respondent No.2. Being the poor persons, it was not possible for them to make payments as per the schedule fixed. When they committed default in payment of installments, the respondent No.2 had started charging penal interest @ 17.5 % over and above the interest already added in the amount

of installments. They raised a dispute under Section 102 of the Cooperative Societies Act and the matter was referred to an Arbitrator, who came to a conclusion that the penal interest being charged @ 17.5% per annum is justified. Petitioners went in appeal, which was dismissed. Their revision petitions were also dismissed vide orders Annexures P/3 and P/4. Hence, the present Writ Petition.

After notice, reply has been filed in this writ petition. At the time of arguments, counsel for the respondents has placed reliance upon document Annexure P/5, to say that the respondents are entitled to charge penal interest @ 17.5%, on amount of installments in case default is committed. To say so, further reliance has been placed upon the mortgage deed Annexure P/7.

With the assistance rendered by counsel for the parties we have gone through the documents on record and also relevant contents of the mortgage deed Annexure P/7. It is not in dispute that when schedule to repay the loan amount was fixed, interest @ 15.7% per annum was added in the amount of installments to be paid. It is also not in dispute that against loan of Rs.80,000/-, up to the year 2002, the petitioners had paid more than Rs.1,70,000/-. If the interpretation given by the respondents is accepted, it would mean that in case of a default committed regarding payment of any installment, the respondents will be entitled to charge interest @ 33% per annum. That will be too harsh and unreasonable. The petitioners are the poor persons. If the contents of the mortgage deed are read carefully, it obviously means that once default is committed regarding payment of any installment, the respondents are entitled to levy penal interest only @ 2 ½ %, as the normal amount of interest, at the rate of 15.7% per annum, already stood incorporated in the amount of installments.

In view of facts mentioned above, this writ petition is allowed, orders, under challenge, are set aside and it is held that on any default committed in payment of installments, the respondents shall be entitled to charge penal interest @ 2 ½ % per annum only.

(Jasbir Singh)
Judge

September 14, 2006 **(Pritam Pal)**
gk **Judge**